IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1815

JAMES C. GABRIEL, *Pro Se*, A Class B Equity Bearing Common Stockholder in the Missouri Pacific Railroad Company, for himself,

Plaintiff-Appellant, Pro Se,

—v.—

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants-Appellees,

—and—

MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY
(THREE JUDGE COURT)

PLAINTIFF-APPELLANT'S REPLY BRIEF TO DEFENDANTS-APPELLEES' AND INTERVENING DEFENDANT-APPELLEE'S MOTIONS TO DISMISS PLAINTIFF-APPELLANT'S JURISDICTIONAL STATEMENT

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The action in which the order was entered was not brought by me to set aside an order of the Interstate Commerce Commission for the issuance of new securities by the

Missouri Pacific Railroad as part of a plan of recapitalization. I have at all times been asking the Honorable Courts for a due process of the evaluation of my Class B equity bearing Common stocks according to the MoPac I.C.C. "Agreed Systems Plans of Reorganization or Charter of 1954-1955, 290 I.C.C. 477, in order to find my Class B real true value in a fair exchange of my Class B for new shares of the recapitalized MoPac Company on a value for value basis so that I would receive the equivalent value for my Class B shares as the values I surrendered. That is my Constitutional right and my Civil Right. It is also according to my rights under the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or Charter, 290 I.C.C. 477, a law of the United States which must be enforced.

The Division 3 of the Commission had approved in their Order of December 6, 1973, Finance Docket #27346 pursuant to Section 20a of the Act, authority granting to MoPac the issuance of new shares in exchange for the Class B equity bearing MoPac Common shares at a value of $2,450 per Class B as "fair value" instead of a due process of law evaluation of Class B of over $22,500 per share, as part of the "Plan of Recapitalization," converting the Class A $5 preferred $100 value stocks into new equity bearing Common without first having a due process of law evaluation of Class B to find Class B real true value. This unconstitutional action by the I.C.C. has helped deprive me out of over $20,000 per each Class B shares that I own. The Class B stockholders as a whole were deprived out of over $615 million and the I.R.S. stands to lose over $100 million in taxes because the I.C.C. will not evaluate my Class B shares under due process of law, 290 I.C.C. 477.

The I.C.C. says I am a dissatisfied member of a class action suit brought by holders of Class B MoPac stock.

The I.C.C. says that this plan of recapitalization constituted the settlement of a class action brought by holders of Class B MoPac stock. But this so-called "plan of recapitalization" is a scheme by Mississippi River Corporation to help take over my Class B equity bearing shares, and other Class B shareholders' stocks by the use of Section 20a of the I.C.C. Division 3—with no due process—at Mississippi's price of $2,450 value per share, whereas Class B has a due process of law value of over $22,500 per Class B, and at the same time under 20a Mississippi River Corporation converts all of her 62% holdings of her $5 Class A preferred $100 value shares into new MoPac Common equity bearing stocks at the ratio or 1 to 24½ instead of the true value of 1 to 225 in favor of Class B. This is almost one tenth of what Class B shares should get in a "Plan of Recapitalization." I am not a member of a class of stockholders that brought about a class action suit on a plan of recapitalization. I voted against the MoPac "Plan of Recapitalization" on the June 15, 1973 Special stockholders meeting in Saint Louis. I never was a member of a class action suit on better dividends. This class action on dividends on Honorable Frederick vanPelt Bryan's order of October 9, 1968, was convoluted into a "Plan of Recapitalization" in 1972 on the same pleadings on dividends. How unjust. All I have asked for at all times is for a due process for my Class B.

On January 27, 1976 I moved to join the Internal Revenue Service under Rule 19.

On March 17, 1976, the Court entered an unsigned order denying my motion. The purpose of the Joinder was to enable the I.R.S., which has the respect of the Federal Courts, to use its law expertise and its command of respect, to help get a court order, ordering the I.C.C. to evaluate my Class B equity bearing common shares under due process of law, according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, a law of the United States that must be enforced, to find my Class B real true value which is about $22,500 per share or about $894 million for the 39,731 shares of Class B, made up of $349 million Retained Income and $545 million in property values belonging to Class B, as of 12/31/72. On the other hand, the I.C.C., without due process, said that $2,450 per Class B was "FAIR VALUE," or a total of only $97 million. This means that over $615 million Class B values were transferred to the Class A $5 preferred $100 value stocks without payment of any taxes. This means over $100 million in Capital Gains taxes owed by the Class A $5 preferred to the I.R.S. 62% of Class A is owned by Mississippi, and so Mississippi owes the I.R.S. approximately $62 million capital gains taxes for the transfer to her Class A about $400 million values.

The Interstate Commerce Commission and MoPac say that my appeal should be dismissed for want of jurisdiction. But my appeal has jurisdiction entered by the three-judge court because this order is governed by 28 U.S.C. 1253 and appellant is appealing the denial of his motion by the three-judge court to join the I.R.S. as a party with him under Rule 19. This MoPac case has the Interstate Commerce Commission and the United States of America

as a party, with appellant seeking to remand this MoPac case to the I.C.C., which requires that a direct appeal must be taken to the Supreme Court of the United States in order to get a remand to the I.C.C., and have a due process of law evaluation by the I.C.C. of my Class B equity bearing Common Shares according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, a law of the United States that must be enforced. Only in this way will appellant get the real true value of his Class B common shares.

The I.C.C. did not evaluate Class B under due process of law. This is unconstitutional especially against the 5th Amendment. Only the Supreme Court of the United States has jurisdiction to join the I.R.S. into this MoPac case under Rule 19. In addition, the I.R.S. must enforce the 16th Amendment because in this instant MoPac case over $600 million values have been transferred without payment of any taxes. The Internal Revenue Service has the law expertise and the respect of the Federal Courts to help win a Federal Court Order, ordering the I.C.C. to evaluate the Class B Common under due process of law, which will give my Class B Common its true real higher value, on which "higher value the I.R.S. will become enabled to collect over $100 million in capital gains taxes, $62 million to be paid to the I.R.S. by Mississippi River Corporation, the architect of this "Plan of Recapitalization" scheme to take over other people's Class B MoPac Common stock properties without due process of law evaluation of their stocks to get their real true values, and without the payment of any capital gains taxes to the I.R.S. for the transfer of

over $400 million values from the Class B to Class A $5 preferred, 62% owned by Mississippi River Corporation.

Additional reasons why this appeal has jurisdiction to get the I.R.S. into this case under Rule 19. The Constitution of the U. S. is involved.

(1) Article 1, Section 10—states as follows:

"No State shall pass • • • any bill of attainder, ex post facto law, or law impairing the obligation of contracts • • • ."

The "Plan of Recapitalization" under Section 20a of the Act is being used by the I.C.C., MoPac, Mississippi River Corporation, and the Federal Courts to impair the obligation of the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or MoPac Charter, 290 I.C.C. 477, which is a contract for the Missouri Pacific Railroad stocks and bonds. This contract gives the Class A $5 pfd. a value of $100 per share, $5 dividends per share per year. The Class B equity shares are made the "residuary beneficiary" of the MoPac properties, which as of December 31, 1972 amounted to $349 million in Retained Income and $545 million in property values, which have more than tripled in value since 1955, or about $894 million total, or over $22,500 per Class B (see pages 19 and 21 MoPac 1972 Annual Report).

(2) The Fifth Amendment due process of law evaluation, which the I.C.C. so far has not followed for Class B.

(3) The 14th Amendment—"Equal protection of the law." I as a small Class B stockholder am not getting equal

protection of the law; the lower Federal Courts are not paying any attention to me and my constitutional and civil rights, but MoPac, Mississippi and Alleghany are getting more than full cooperation by the Federal Courts and agencies.

The Interstate Commerce Commission says that my appeal is untimely. That is not true. My Notice of Appeal to the Supreme Court of the United States is timely. The three-judge court entered its order denying my motion and affidavit to join the I.R.S. under Rule 19 Joinder of Persons Needed for Just Adjudication as a party with plaintiff on March 17, 1976, but the Court clerk mailed me a copy of the Order minus the signatures of the Honorable three judges in the Three-Judge Court.

I made my Notice of Appeal to the Supreme Court of the United States and filed it in the Court Clerk's office in Trenton, N.J. on March 22, 1976 by making it in the following manner:

I made a Motion and Affidavit and had it notorized on March 20, 1976 and filed it in the District Court clerk's office on March 22, 1976 and worded it as follows:

(1) "This is my Notice of Appeal to the United States Supreme Court after I have received a signed original filed copy signed by Honorable Hunter III, U.S. Circuit Judge; Honorable Lawrence A. Whipple, Chief, U.S. District Judge; and Honorable Clarkson S. Fisher, U.S. District Judge, of the Civil Action Order, Civil Action #74-471, *James C. Gabriel, Pro Se, Plaintiff* v. *United States of America and Interstate Commerce Commission, Defendants, Missouri Pacific Railroad Company, Intervening Defendant,* denying my Motion to Join the Internal Revenue Service under Rule 19 into this MoPac case to help the I.R.S. collect $100 million in taxes."

(2) I waited some time for the Court to mail me a signed filed copy by the Honorable Three-Judge Court making their order of denial official so that I could make my Notice of Appeal to the Supreme Court of the United States official.

(3) On April 22, 1976, I personally went to Trenton, N. J. and filed with the Clerk of the District Court a sworn affidavit, again requesting the Three Honorable Judges signatures on their order denying my motion to join the I.R.S.

(4) I took a copy of my filed affidavit to Hon. Judge Fisher's chambers. His secretary telephoned the Clerk's office and was told by a deputy clerk that they had a signed copy by the 3 judges of the denial of my Rule 19 Joinder of the I.R.S. with my MoPac case. I went into the Clerk's office and bought one zeroxed copy for 50 cents and I got a receipt for this 50¢ dated April 22, 1976. I immediately made an official second Notice of Appeal to the Supreme Court of the United States which I filed the following day April 23, 1976 at the Clerk's office, one original and seven copies, all to the Clerk of the District Court.

(5) In addition to having done all of the above, I found out at the University law library that 60 days are the Rule on this MoPac case, according to Rule 4(a), Appeals in Civil Cases, Appeal as of Right when taken, because the United States or an official or an agency is a party in the case, such as in the present MoPac case where the Interstate Commerce Commission and the United States of America are defendants in this case, and I am trying to get the I.R.S. into this case under Rule 19 in order to remand the case to the I.C.C. to get my Class B equity bearing common stocks evaluated under due process of law, 290 I.C.C. 477.

(6) In addition to all of the above, the fact that I made a motion and affidavit and filed it with the Clerk of the District Court on March 22, 1976 asking the Honorable District Court to have the Three Honorable Judges of the three-judge court sign their Order entered on March 17, 1976 denying my motion and affidavit to join the I.R.S. under Rule 19 Joinder of Persons Needed for Just Adjustment as a party with Plaintiff temporarily suspended the 30 day period after the entry of the Order of the Court on March 17, 1976, so that the time for Notice of Appeal to the Supreme Court of the United States was extended by my motion and affidavit of March 22, 1976 to a longer period than the 30 day period that was supposed to expire on April 16, 1976, so that my Notice of Appeal to the Supreme Court on April 23, 1976 after I had received the signatures of the three Honorable Judges on April 22, 1976, a day before, denying my Notice of Motion to Require Joinder of the Internal Revenue Service under Rule 19 was timely.

(7) The fact remains that my Jurisdictional Statement to the Supreme Court to get the Joinder of the Internal Revenue Service under Rule 19 was stamped and received in the Supreme Court of the United States on June 15, 1976 exactly 90 days from the filing date of the 17th of March, 1976 when my motion to join the I.R.S. as a party plaintiff was denied by the three judge court. It cannot be said that I failed to file a Notice of Appeal to the Supreme Court on time. My motion and sworn affidavit filed with the Clerk of the Court on the 22nd of March will prove that my filing of my Notice of Appeal was timely.

CONCLUSION

It is therefore respectfully submitted that my appeal to this Honorable Supreme Court of the United States should not be dismissed for the above reasons in the interest and cause of justice.

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Reply to Motion by Intervening Defendant

This is my Reply to the Motion by Intervening Defendant-Appellee Missouri Pacific Railroad Company to Dismiss or Affirm my appeal to the Supreme Court of the United States under Rule 19 into my MoPac case.

The questions and answers are about the same as those posed by the Interstate Commerce Commission. Please refer to that part of my Reply Brief that pertains to the I.C.C. for additional information that MoPac seeks.

Answer to MoPac's Questions

This action has been brought by Plaintiff not to set aside an Order of the I.C.C. made on December 6, 1973, on Finance Docket #27346, on a "Plan of Recapitalization" under 49 U.S.C., Section 20a, but to get a due process of law evaluation of Plaintiff's Class B equity bearing Common stocks, according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or MoPac Charter, 290 I.C.C. 477, to get the real true value of my Class B Common shares which is about $22,500 per Class B and not the $2,450 per share decided by the I.C.C. Division 3, of Commissioners Tuggle, Deason, and MacFarland as "FAIR VALUE," without the I.C.C. first evaluating my Class B under due process of law according to 290 I.C.C. 477 or MoPac Charter 1954-1955, which is a law of the United States and must be enforced.

That order by the Three Judge District Court was affirmed by judgment of May 6, 1976. Motion was made for Reconsideration under Rule 12 I of Rules of the District

Court on May 20, 1976, which was denied by Judgment. A Notice of Appeal was made to the Supreme Court of the United States from that Judgment before the time to appeal had expired. It is going to the Supreme Court in September, God willing.

Appellant is not a member or a party of a class action of Recapitalization or Judge Weinfeld's opinion which approved the so-called "Plan of Recapitalization." Appellant never appointed anyone to represent him in any class action. Appellant voted all his Class B shares against the "Plan of Recapitalization" on June 15, 1973 at the Special MoPac Stockholders Meeting in Saint Louis. All Plaintiff wanted and wants at all times is a due process of law evaluation of his Class B equity bearing Common shares, according to the MoPac I.C.C. "Agreed System Plan" of Reorganization, 1954-1955, or Charter 290 I.C.C. 477, to get the real true value of his Class B, to exchange these B shares into the new Common shares of the Recapitalized MoPac Company.

Plaintiff has a Constitutional right to get the Internal Revenue Service into the MoPac case in order to enable the I.R.S. to use its law expertise to help win a Federal Court Decision to remand this MoPac case back to the I.C.C. to have the I.C.C. evaluate his Class B shares under due process of law, according to 290 I.C.C. 477. This would make it possible for the I.R.S. to collect capital gains taxes that can only be gotten through a due process of law evaluation of Class B which gives Class B its real true higher value, almost 10 times more than the $2,450 value per Class B, or $22,500 per Class B.

MoPac is wasting its time if it thinks that suggesting that there is a reward for informing the I.R.S. of taxes due from Mississippi River Corporation on this "Plan of Recapitalization," unless there is first a due process of law evaluation of my Class B to find Class B higher values on which the I.R.S. capital gains depend upon. That is the reason why I have been fighting in the Federal Courts all of this time. MoPac and Mississippi are playing coy by their suggestions. They are trying to divert attention elsewhere from the real objective, because they don't want to be hurt financially for over $62 million in capital gains taxes, plus many other costs. That is why they are fighting me from getting my stocks evaluated under due process. I have a Constitutional right for a due process according to Article 1, Sections 9 & 10, 5th Amendment, and 14th Amendment.

I am asking the District Court to require the I.R.S. to become a party to this action in order that the I.R.S. use its law expertise to get a Federal Court Order, ordering the I.C.C. to evaluate my Class B equity shares according to the MoPac I.C.C. "Agreed System Plan" of Recapitalization of 1954-1955 or Charter, 290 I.C.C. 477, to get my Class B shares real true value in a fair exchange for the new MoPac Company. Based upon this MoPac true value, the I.R.S. will be entitled to over $100 million in capital gains taxes that MoPac and Mississippi tried to avoid paying by using Section 20a of the Act to have their way on Class B values. A due process of law evaluation of Class B would have cost MoPac and Mississippi a great deal of money which they could not afford to pay under those terms.

CONCLUSION

For reasons stated herein it is respectfully submitted that the appeal should not be dismissed in the interest and cause of justice.

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Certificate of Service

I, JAMES C. GABRIEL, *Pro Se,* Plaintiff-Appellant, do hereby certify that 3 copies of the above and foregoing Plaintiff-Appellant's Reply Brief have been deposited in the United States Mail, postage prepaid, on the 26th day of August, 1976, to the following addressees:

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